

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**CHAD HOGAN,  
Plaintiff,**

**v.**

**CITY OF MONTGOMERY, et al.,  
Defendants.**

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**Case No. 2:05-cv-687-MHT-VPM**

**PLAINTIFF'S RESPONSE TO DEFENDANT ARNAUD'S  
REQUEST DENYING DEFAULT JUDGMENT**

COMES NOW PLAINTIFF stating as follows in response to Defendant Anthony Arnaud's request denying default judgment:

**DEFENDANT'S REQUEST SHOULD BE DENIED FOR HIS FAILURE TO PRESENT  
GOOD CAUSE AND MERITORIOUS DEFENSES.**

Plaintiff Chad Hogan commenced this suit on July 27, 2005, alleging Defendant Anthony Arnaud had violated Plaintiff's rights by commencing prosecution against Plaintiff without knowledge or cause. Plaintiff sues Defendant Arnaud for common law malicious prosecution and/or abuse of process. The facts as presented in the Complaint demonstrate that Arnaud knew at the time of Plaintiff's arrest that no crime had been committed. Regardless, under pressure from police Arnaud agreed to sign and did sign a statement under oath verifying that Plaintiff had committed burglary. The court's record indicates that Arnaud was served on August 5, 2005. An answer or response was due the court on August 25, 2005. Plaintiff moved for Default on September 9, 2005. An answer was filed by Arnaud on September 12, 2005. On September 20, 2005, Arnaud, through legal counsel, filed a response to the default. The response states that an answer was filed immediately upon the hiring of legal counsel. The response further states that Arnaud is of the impression that no prejudice will be shown the parties by the late answer. Arnaud now seeks to set

aside or avoid the application for default. Arnaud's response to the application for default gives shows no good cause for the delay in filing of the answer.

A court may set aside the entry of default "for good cause shown". *Fed. R. Civ. Pro.* 55(c). The trial court has the discretion of whether to set aside a default. *Bonaventure v. Butler*, 593 F.2d 625 (11<sup>th</sup> 1979). In the present case the defendant makes no showing of good cause. This defendant simply states that he misunderstood the civil summons and complaint. This defendant assumably claims mistake or excusable neglect. Further, this defendant alludes to possible affirmative defenses, however, he makes not attempt to articulate said defenses.

To establish mistake, inadvertence, or excusable neglect necessary to set aside default judgment, defaulting party must show that it had meritorious defense that might have affected outcome, that granting motion would not result in prejudice to non-defaulting party, and that good reason existed for failing to reply to complaint. *Florida Physician's Ins. Co., Inc. v. Ehlers*, (11<sup>th</sup> 1993).

The above considered the Plaintiff respectfully requests that the request for denial of default judgment submitted by the Anthony Arnaud be denied.

RESPECTFULLY submitted this the \_10\_ day of October, 2005.

s/ANDY NELMS  
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#### **CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing to counsel of record listed below by

placing same in the United States mail, properly addressed and postage prepaid on this the \_\_\_10th\_\_\_ day of October, 2005.

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